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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/062,325	01/31/2002	William Kress Bodin	AUS920010855US1	3989
34533	7590	09/29/2006	EXAMINER	
INTERNATIONAL CORP (BLF)			LANEAU, RONALD	
c/o BIGGERS & OHANIAN, LLP			ART UNIT	
P.O. BOX 1469			PAPER NUMBER	
AUSTIN, TX 78767-1469			3627	

DATE MAILED: 09/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/062,325

Applicant(s)

BODIN ET AL.

Examiner

Ronald Laneau

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/13/06 has been entered.

***Claim Rejections - 35 USC §112 2<sup>nd</sup> Paragraph***

2. The rejection to the claims under 35 USC 112 2<sup>nd</sup> paragraph has been withdrawn in view of Applicant's arguments.

***Claim Rejections - 35 USC §102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States. . . .

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 11-20 are rejected under 35 U.S.C. §102(e) as being anticipated by Reber et. al. (U.S. 5,798,694).

Reber discloses means for providing inventory item attributes comprising data attributes wherein the inventory items attributes describe an inventory item (the tag must have attributes to separate it from other tags; RFID identification tag 30 and code field (inherent), the RFID tag detects changes, records changes, compares control values with acceptable values, and takes action if those actions are outside a range (e.g. if a refrigerated item has a temperature which is outside an acceptable range, notification is made).

***Claim Rejections - 35 USC §103***

5. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 11-20, as understood by the Examiner, are alternatively rejected under 35 U.S.C. §103(a) as being unpatentable over Reber. It is the Examiner's principle position that the claims are anticipated because of the RFID identification tag code field is inherent.

However if not inherent, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Reber to expressly indicate an RFID identification tag code field. Such a modification would have made it clear that RFID tags require unique ID numbers in order to properly identify the tag.

It is the Examiner's position that 'out-of-range' indicators in RF tag devices is old and well known in the art. Evidence to support this includes but is not limited to Friedman et. al. (U.S. 6,593,845 B1) column 5, ~ lines 64-67.

Claims 1-10 and 21-30, as understood by the Examiner, are rejected under 35 U.S.C. §103(a) as being unpatentable over Reber. Because Inventions I and III are not patentably distinct from Invention II, the patentability of Inventions I and III as currently claimed stands or falls with the patentability of Invention II.

The Examiner concludes that Applicants have decided not to be their own lexicographer by indicating and defining claim limitations to have meanings other than their ordinary and accustomed meanings. To support this position, the Examiner relies on the following factual findings. First and as noted in the previous Office Action, the Examiner has carefully reviewed the specification and prosecution history and can not locate any lexicographic definition(s). Second, the Examiner finds that not only have Applicants not pointed to definitional statements in their specification or prosecution history, Applicants have also not pointed to a term or terms in a claim with which to draw in those statements with the required clarity, deliberateness, and precision. Third, after receiving express notice in the previous Office Action of the Examiner's position that lexicography is not invoked, Applicants have not pointed out the "supposed errors" in the Examiner's position regarding lexicography invocation in accordance with 37 C.F.R. §1.111(b) (*i.e.* Applicants have not argued lexicography is invoked). Finally and to be sure of Applicants' intent, the Examiner also notes that Applicants have declined the Examiner's express invitation to be their own lexicographer. It remains the Examiner's position that these requirements were reasonable. Accordingly and for due process purposes, the Examiner gives notice that for the remainder of the examination process (and except for the application of 35 U.S.C. §112 6<sup>th</sup> paragraph), the heavy presumption

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in favor of the ordinary and accustomed meaning is not overcome; the claims therefore continue to be interpreted with their “broadest reasonable interpretation . . . .” *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). The Examiner now relies heavily and extensively on this interpretation. Unless expressly noted otherwise by the Examiner, the preceding claim interpretation principles in this paragraph apply to all examined claims currently pending.

Under the broadest reasonable interpretation standard noted above and unless expressly modified in this Office Action, the Examiner maintains his interpretations including the statements and/or definitions of claim limitations as noted in previous Office Action. Those previous definitions are part of the administrative record and, in accordance with *In re Morris*, are provided simply as a factual source to support the Examiner’s claim interpretations (and ultimately the Board of Patent Appeals and Interferences claim interpretations if necessary) during ex parte examination.

The Examiner maintains his position that claims 11-30 are product or machine claims. Applicants’ arguments have been considered but are not persuasive.

### ***Response to Arguments***

7. Applicants’ arguments filed May 3, 2005 have been fully considered but they are not persuasive.

Applicant argues that Reber does not disclose “an inventory control including RFID identification tags and detecting changes in the inventory item attributes.” In response to Applicant’s arguments, the system of Reber can also be used as an inventory control since items

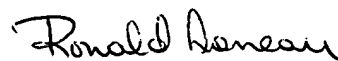
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stored in a cupboard or refrigerator are registered using a label and placed on a home inventory list. The label placed on said items can be the RFID tag which is inherently taught by the system of Reber. Claims 1-30 remain rejected.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald Laneau whose telephone number is (571) 272-6784. The examiner can normally be reached on 7:30 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Ronald Laneau  
Primary Examiner  
Art Unit 3627

9/25/06